UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

--------------------------------:
SANDRA J. BERRIOS,
Plaintiff,

-vs- Case No. 1:11-cv-1130

EXPERIAN INFORMATION SOLUTIONS, INC, et al.,
Defendants.
--------------------------------:

HEARING ON MOTIONS

February 24, 2012

Before: Ivan D. Davis, Mag. Judge

APPEARANCES:

Kristi C. Kelly, Counsel for the Plaintiff

George E. Kostel, Counsel for Defendant Flagstar

NOTE: The case is called to be heard at 10:02 a.m. as follows:

THE CLERK: Berrios versus Experian Information Solutions, Incorporated, et al., case number 11-cv-1130.

Parties please identify yourself for the record.

MS. KELLY: Good morning, Your Honor. Kristi Kelly with Surovell Isaacs Petersen & Levy for the plaintiff.

THE COURT: Good morning.

MR. KOSTEL: Good morning, Your Honor. George Kostel for Flagstar Bank.

THE COURT: Good morning.

MR. KOSTEL: Good morning.

THE COURT: This matter is before the Court on the plaintiff's motion to compel and/or for sanctions pursuant to Federal Rule of Civil Procedure 37.

The Court has had an opportunity to review the motion, the memorandum in support of the motion, the opposition to that motion, and the reply to that opposition.

Is there anything the plaintiffs would like to add to their motion at this time?

MS. KELLY: Yes, Your Honor. First I would like to start by apologizing to the Court for having to file a correction brief and to Mr. Kostel for indicating that there was no privilege log. It was an error of communication between co-counsel. Mr. Bennett has been in and out of the hospital for unanticipated surgery and our offices weren't communicating properly.

So, that was our error. And I apologize to both the Court and Mr. Kostel for that.

I would like to start by-- I don't know if Your Honor wants to go through each interrogatory. Some of-- And objections specifically, but I can start by simply indicating that we think all of the issues that we have before the Court are relevant. We think that the specific objections are blanket objections and not in compliance with the Federal Rules.

Mr. Kostel has indicated to us that he has provided all relevant documents; however, he is refusing to withdraw his specific objections to those interrogatories and requests for production of documents. Every RFP and interrogatory has a specific objection with it, and we think that a lot of the items are relevant and specific enough where the objections should be overruled or stricken or withdrawn by Mr. Kostel.

THE COURT: Well, the Court is a little confused. This is a rare occasion in which the parties appear to be so diametrically on opposite sides about what has and has not been produced and/or responded to.

Is it your position that you don't believe that the defendants have provided all responsive documents in their possession, custody or control, or is it you simply just want the objections to be withdrawn?

MS. KELLY: It's both, Your Honor. First off, regarding the documents that haven't been produced-- For example, Mr. Kostel has indicated that he has produced the plaintiff's entire loan file. However, there is not a single monthly mortgage statement.

He has indicated that all correspondence has been produced. We also have a RESPA claim here for qualified written request that wasn't responded to, and they have asserted that they have complied with RESPA in their answer; however, there is no correspondence indicating a response to our qualified written request.

Ms. Berrios has been making payments, and each payment is returned to her rejected. And she has a couple of those letters still in her possession, custody and control, but we didn't receive any correspondence of the rejection of payments.

Stuff like that, that we would think would be easy for the defendant to get to us, but we're not-- And we're not sure, because each question has an objection, if we're getting all the documents or not.

Regarding the specific FCRA claims, stuff like the FCRA manuals, policies and procedures that were implemented, they produced the Consumer Data Industry Association manual, which is about a 300-page manual produced by the three credit bureaus that tells all the furnishers, like Flagstar, how to report to them payment information. It is not a Flagstar manual.

But there is also a Flagstar, I guess you could call it, manual that is produced, but it's really a cheat sheet on-- Not a cheat sheet, but kind of like a cut and paste on how to do different things at Flagstar. And there is only one sentence that is relevant to a consumer dispute in this case. There is very few documentation.

And so, if there is no other manuals, that's fine, but we would want the objection to that withdrawn so that we can say, Flagstar didn't even have any procedures for a dispute like that. They just had one sentence that says, verify the data.

Well, what does that mean? Do you go to a database? Do you look at documents. We don't know. And the reasonableness of the investigation in an FCRA case is really important for the liability issue. A jury has to know what was done as part of the investigation to determine whether it was reasonable.

THE COURT: But if he stands up and says he's produced all the documents they have and there is no manual --

MS. KELLY: That's fine.

THE COURT: -- then you have your argument, correct?

MS. KELLY: Right. But the thing is, there is objections to that. So, he could say, if there is still objections in place, well, we didn't produce it because we had an objection to the scope. So, we have that. We had policies from 2008, but we didn't produce it because we thought only policies relevant to 2009--

THE COURT: Well, as an officer of this court, the Court understands that defense counsel is not going to stand up in this court and say in a written document, as well as orally in front of this Court, that he has produced all documents, and have not produced all documents.

MS. KELLY: Right. So, we would ask in that case if Mr. Kostel has produced all the documents, then there should be no need to maintain those objections to that request for documents. The objection should be overruled because he has complied with the request. Either he objects to the request and doesn't respond, or he produces the documents. That's the Capetta case that we cited in our brief.

THE COURT: But are we here simply because you want the objections to be overruled or withdrawn? I mean, a motion to compel, the purpose of it is to compel documents that you believe exist and you believe should be produced which have not been produced.

MS. KELLY: Correct. And we believe there are documents that have not been produced. I can go through-- Well, with regard to the interrogatory answers, I don't know if

Your Honor has had a chance to review those, but they just refer us to certain documents which are not responsive to the interrogatory requests and tell us to glean the answer ourselves. We don't believe that those responses are appropriate.

A lot of the interrogatory responses, there is just a general, we conducted an investigation, you can look at the ACDVs. Well, the interrogatory specifically asked, what did you do as part of that investigation? Did you pull up the database? Did you look at a screen? Did you open a filing cabinet, pull out Ms. Berrios' file? What did you do as part of that investigation?

If there is no documents governing how an investigation is done, then we should have interrogatory answers that say, in response to this request, this is what was done as part of this dispute, they went to--

THE COURT: So, it's your position that you don't believe that the documents that they refer to answer the interrogatories?

MS. KELLY: Correct. In addition-- Well, we just don't believe the interrogatories were answered very specifically at all.

For instance, in number 1 and 7, they object to produce their change in policies and procedures since the Eastern District of Virginia case in Johnson. They don't provide any information, they don't provide any policy changes or anything, they just simply object and refer us to documents.

In interrogatives number 2 and 21 we asked for what each month that Ms. Berrios' account, that you had Ms. Berrios' account postmodification, please tell us what you reported to the credit bureau, the status of her account. That is entirely relevant, and it's not something we can ascertain from the documents that have been produced.

Did they say she was 60 days past due in March? Did they say she was 180 days past due? Did they say her account was in foreclosure? All of that is relevant to our case, that they were reporting her delinquent.

THE COURT: Well, I don't think anyone is here arguing certain things may or may not be relevant. I know there are certain things the defense says are not relevant. Obviously, what they did to investigate we all agree is relevant, that's the whole reason this lawsuit is here.

MS. KELLY: Correct.

THE COURT: But the question is, because the rules do allow an answer to an interrogatory based on referencing, reference to documents that have been produced. So, that's completely appropriate.

The only real question is whether or not the documents that have been produced answer the question or not. Because if they don't answer the question, then you may have a legitimate argument. If they do answer the question but you simply don't want to go through them to get the answer, that's another whole story.

MS. KELLY: Your Honor, I can represent to the Court that I went through all the documents, I'm the one that compiled that spreadsheet of what all the documents are. I went through them very specifically that were produced to ascertain what information we did and did not have.

We do not have information about changes in policies or procedures. We don't have a real manual, except one sentence that would pertain to this type of case. There are a few pages in the manual that was provided regarding credit disputes in general, but not specifically to ACDV operators.

And so, we're asking what as an ACDV operator did you do? What are the policies that you follow? Is it just you get an oral training that says, this is how we do our disputes, this is how you investigate? We don't know any of that because the documents we have, they are not-- Flagstar may not have the documents, which is fine, they may not have policies or procedures, but they may have had oral communications or e-mail communications to these ACDV operators explaining how to do investigations and disputes.

And so, those should be provided either as responsive documents or in the interrogatory responses on what they did to investigate. Because it's just not clear from the documents.

If you look at the spreadsheet that we provided, you can see a lot of the documents are just loan origination documentation from the prior lawsuit. There is correspondence regarding her being in default that was sent to her, the default correspondence. There is a lot of loss mitigation correspondence saying, you're behind, let us help you save your house. You know, here is an application, submit it.

And then there is the large CDIA manual, which is not a Flagstar manual, it's an industry manual. And then there is the smaller Flagstar kind of manual that isn't really on point.

And so, that's what we are left with. There is very few documents regarding credit disputes at all. There is the ACDVs, and that's pretty much it. And so, we can't ascertain from the interrogatory, from the documents what the answers to the interrogatories are.

We would submit that for interrogatories 1 and 7, we should get answers to the changes in policies, if any, that have occurred regarding the litigation in the Fourth Circuit with--

THE COURT: Now I am confused again. I'm looking at page 9 of your memorandum in support of your motion. And it basically says, the plaintiff has boiled down its outstanding discovery needs to the following interrogatories, 8, 10, 14, 15, 16 and 18. Now you're talking about interrogatories 1 and 7.

MS. KELLY: Yes, Your Honor. I apologize, we did not have a response to interrogatories 1 and 7. They had a general objection, which the earlier part of our brief addresses. We have not gotten a response to any changes in policy or procedure. And we think it is entirely relevant to willfulness. It has just a blanket objection.

And so, we would ask that they be compelled to answer those because we think that they are entirely relevant.

Regarding interrogatory 2 and 21, there are-- Flagstar again refers us to the documents, and we do address this in our brief that these interrogatories specifically with the blanket objections, how they refer us to documents. And we think we're entitled to a month-by-month answer on how they reported Ms. Berrios' account to the--

THE COURT: All right. Well, what interrogatories actually still are in dispute? Because, as I noted, in your memorandum in support you set forth certain interrogatories. Now you're naming other interrogatories that are not set forth on that page in your memorandum.

So, what, what are there still disputes about?

MS. KELLY: 1 and 7.

THE COURT: You just named 2 and 21 now.

MS. KELLY: Yeah, 2 and 21. Well, they are similar issues. I am grouping them by the type of requests that they are. So, I can go in numerical order if you prefer.

THE COURT: That's the only way the Court knows what's in dispute.

MS. KELLY: Okay. I apologize. 1, 2, 3, 4, 5, 7, 16-- Oh, 9 and 10.

THE COURT: So, 8 is no longer in dispute?

MS. KELLY: No, 8 is also in dispute, but it's analogous to 4, 5 and 16. And 21.

THE COURT: What about 16 and 18?

MS. KELLY: Yes, 16. 18, I believe that's regarding the net worth. And Mr. Kostel produced the annual reports from the SEC that Flagstar provided on the 16th. And we've also discussed that we're willing to try to get a stipulation as to the net worth. So, we don't need to put that before the Court.

THE COURT: So, then it's 1, 2, 3, 4, 5, 7, 8, 10, 14, 15, 16 and 21?

MS. KELLY: Correct.

THE COURT: All right.

MS. KELLY: And my apologies if our brief wasn't clear on that. Do you want me to go through each one now?

THE COURT: Well, let's hear from Mr. Kostel.

MS. KELLY: Okay.

MR. KOSTEL: Thank you, Your Honor. This is the first time I'm hearing anything about interrogatory answers. I have to tell you, this sounded like a meet and confer conference, which I would have been glad to have last Thursday before they filed the motion.

THE COURT: What do you mean this is the first time you have heard about interrogatory answers?

MR. KOSTEL: I provided supplemental interrogatory responses on February 15. We had a meet and confer conference at 12 noon on the 16th. I said, if there is anything that you want that is not in our supplemental interrogatory answers--

THE COURT: Who is we? Who is we?

MR. KOSTEL: Ms. Kelly and myself. I asked her specifically about interrogatories. She said, will you withdraw your objections. I said, I will not.

I said, is there anything else I can provide you in the interrogatory answers? She said, only if you will withdraw your objections. I said, I politely decline.

Your Honor, I would have been happy to supplement these interrogatory answers. All she had to do was write me a letter Monday morning or Thursday afternoon. She could have still filed the motion on Friday. All I wanted was a letter saying which-- Give me the numbers. I mean, she couldn't even give you the numbers today standing here in court.

This is what meet and confer conferences are about. I sent her all the documents. I said, I assume these documents answer your questions about the interrogatories in combination with my supplemental responses. That letter was sent Thursday. The motion was filed Thursday afternoon. I have not had one conversation with them since then about this.

On the policies, Your Honor. You went through the--

THE COURT: Let's start with that. Ms. Kelly.

MS. KELLY: Your Honor, just to briefly address Mr. Kostel. We did have a meet and confer on the day the motion was filed. I said, it's difficult for me to ascertain whether you're withholding information in your interrogatories or you're just unable to answer them or don't have any other documents to answer them because you object to every single one. And I go, you know, unless you withdraw your objections, it's impossible for me to determine whether you're fully answering or you're withholding information or anything like that.

THE COURT: But that has nothing to do with the answers to the interrogatory. Whether they are-- If they are withholding information or they are not withholding the information, either the interrogatory was answered to your satisfaction or it wasn't.

MS. KELLY: Right. And they weren't--

THE COURT: And if it wasn't, you should have informed Mr. Kostel that it wasn't, and then forward he could have supplemented the interrogatory answers. Whether he had objections or not is irrelevant in regards to whether or not you believe the interrogatory was answered sufficiently.

MS. KELLY: Right, Your Honor, but we did have meet and confers and we did discuss the documents that were needed. And the interrogatory--

THE COURT: Not the documents. I'm talking about the interrogatories.

MS. KELLY: Right. We did talk about all the discovery in the meet and confers. We said, we need stuff relevant to how people are paid. We need stuff relevant, relating to manuals and procedures. And Mr. Kostel says he's produced everything and you can ascertain it from that.

I have looked through the documents and I can't ascertain the answers to that. So, we're moving, we moved to compel.

THE COURT: And when you did that, when you went through the documents and realized that you don't believe that the interrogatories were sufficiently answered based on references to the documents, did you then contact Mr. Kostel and say, these interrogatory answers or these particular interrogatory answers are insufficient and this is why they are insufficient?

MS. KELLY: No. I told him all the interrogatory answers--

THE COURT: That's what is required pursuant to Local Rule 37(E).

MS. KELLY: No, Your Honor. In response to your question, I told him all of the interrogatory answers were insufficient because they were all insufficient. I asked him to supplement them and consider his objections--

THE COURT: Did you say why they were insufficient?

MS. KELLY: Because his, I said if he's withholding information, I don't think he'd answer them properly. He didn't provide any answers to them on most instances, and he just referred us to documents. And I told him, the documents, I don't think everything is there. And he indicated, everything is there.

And so, we can't get the answers from the interrogatories, to interrogatories because the documents aren't there. We've had these discussions about the types of things that are responsive to our discovery requests.

THE COURT: Okay. Well, you're going to have another one. This Court is not going to sit here and go through each one of these interrogatories to determine why they are insufficient when counsel themselves could sit down and discuss what particular parts of the interrogatories are insufficient and why they are insufficient.

That's what Local Rule 37(E) requires. If you believe that your meet and confer didn't sufficiently address your concerns, then you have another meet and confer. If in the next meet and confer he says, I'm not providing anything else, and you believe they have something else, then you file a motion to compel.

MS. KELLY: Okay, Your Honor. Regarding the document requests, can--

THE COURT: Well, here, the only request for production that you set forth on page 10 that has not been sufficiently addressed is request for production number 17.

MS. KELLY: Correct, but all of, they all also have objections. So, regarding 17--

THE COURT: I'm not really here-- I'm not concerning myself as much with the objections right now as to what information you need. That's what the discovery process is about, propounding discovery and responding to the discovery.

So, as long as the Court feels the parties have gotten what they deserve, that's what the Court concerns itself with. I am not here to deal with technicalities.

MS. KELLY: Okay.

THE COURT: So, is request for production 17 not the only document request that has been sufficiently responded to?

MS. KELLY: Yes, Your Honor.

THE COURT: Yes, it is; or, yes, it's not?

MS. KELLY: Yes, there are additional requests that have not been sufficiently responded to.

THE COURT: And those requests would be?

MS. KELLY: Number 2. Number 3 and 4 are correspondence that were objected to on the basis of privilege with third parties. Number 5. Number 6. Number 7. 10, 11.

13. 14. 17. 21. And 22.

THE COURT: Why is it in your memorandum in support of your motion, does it only say request for production number 17? How can this Court possibly resolve this motion without even knowing what is still in dispute?

MS. KELLY: Your Honor, I understand what you're saying, and I apologize if our memorandum was not clear. But all of these objections, all of these requests have objections placed before them. And we have Mr. Kostel explaining to us that he has produced everything responsive to these requests that he can locate.

And we don't think that everything has been produced, but we rely on Mr. Kostel's representation. If he is going to fully answer the requests, then we would ask that the objection be withdrawn so that we can then say, if we present a case to a jury, that these were the only documents that they had regarding a dispute procedure. And they can't then object to that because we requested it in discovery.

THE COURT: How can they object to it-- If he says in discovery, we have produced everything that we have in response to these requests that are in our possession, custody and control, he full well knows that then at trial he cannot attempt to introduce any documents or any answers in front of a jury which he has not produced to you in discovery.

So, that's not an issue for you. He can't do that pursuant to the Federal Rules of Civil Procedure.

MS. KELLY: But his responses say, subject to my objections, see the enclosed documents. It doesn't say, I have enclosed everything, I have produced everything. It says, subject to the objections about relevance and overbroad, I have produced some documents, produced what documents I have.

THE COURT: It doesn't say he produced some documents.

MS. KELLY: It doesn't say--

THE COURT: It says he produced all documents.

MS. KELLY: It doesn't say, I produced all documents. Mr. Kostel has represented that he, this is what he has found and this is what he has done, which is fine, but the actual pleading itself, we can't call Mr. Kostel as a witness and say, isn't it true that there is no other documents.

THE COURT: No. But if he stands up in court at trial and tries to introduce a document he has not provided you and then tries to argue to the judge, that's okay, even though he represented to you that he has produced all documents, and represented to this Court- Because he filed an opposition to your motion which says, he's produced all documents. You think any judge is going to authorize him to introduce in front of any jury information that he has not provided in discovery when he says he has provided it all?

MS. KELLY: That's fine, Your Honor. We will stand, if Mr. Kostel's representation is that there are no other documents, there is no other manuals, there is nothing, that's fine, we are fine with that assertion.

THE COURT: Well, let's find out. Mr. Kostel.

MR. KOSTEL: I don't know how many times I have to say it. I'm saying it again. They have all responsive documents except for the categories I highlighted in my opposition, which you addressed last week, Judge. Which were prior litigation, employee files and manuals dating back to the beginning of time. We have given them the manuals from January of 2008 forward.

THE COURT: What about her representation that your reference to documents in the interrogatories after having reviewed those documents, there are no answers in those documents to those specific interrogatories?

MR. KOSTEL: Happy to have a conversation about that, Your Honor. I invited that conversation on February 15 in my letter where I closed with: I trust this addresses all your concerns. I'm glad we were able to resolve this.

That was after I provided the supplemental interrogatory answers. Judge, I didn't hear another word until they filed the motion.

THE COURT: Here is what the Court is going to do.

MR. KOSTEL: Your Honor--

THE COURT: I am going to continue this matter until next Friday at 10 a.m. The parties are required to meet and confer again in regards to the responses to the interrogatories as well as whether or not there are any other documents that respond to the requests for production.

In regards to that, the Court is going to modify its previous determination concerning the 30(b)(6) depositions because the Court determines there may be certain things that may be irrelevant for purposes of a 30(b)(6) deposition that may be relevant for purposes of answering interrogatories or requests for production. Especially since you informed the Court last time that she was going to, in regards to like compensation and such, she was going to depose the individual ACDV employees. Therefore, the Court found that irrelevant for purposes of a 30(b)(6) deposition. It doesn't mean it's not relevant for purposes of producing documents in response to requests for production.

So, during your meet and confer, this is what the Court is going to determine that is relevant for purposes of interrogatory answers and requests for production, or at least from what the Court can glean from what's remaining in dispute.

The Court is going to determine that compensation of employees who investigated Ms. Berrios' claim is relevant for purposes of this portion of discovery, who investigated and processed the complaint. Those parts of the personnel files of those individuals that show any discipline for any insufficient, other insufficient investigations, lawsuits and/or complaints that concluded that any investigation conducted concerning complaints were inadequate.

MS. KELLY: I'm sorry, Your Honor, just regarding the last one, you indicated lawsuits or complaints that were concluded.

THE COURT: That concluded. A complaint that was investigated and concluded and/or a lawsuit in which a determination was made that their investigation was inadequate.

MS. KELLY: We requested all lawsuits that were filed under 1681s-2(b) because--

THE COURT: The Court understands what you requested. The Court is telling you what the Court determines is relevant.

MS. KELLY: If I just, if I may, Your Honor, we would submit that all lawsuits would be relevant because, regarding just the s-2(b) claim, because Flagstar could easily resolve those lawsuits when they realized they didn't conduct a proper investigation.

We're not asking for the terms of settlement or anything like that, but they could easily resolve the lawsuit when they realized that they had the liability instead of having a conclusion of a verdict or something like that.

THE COURT: But a lawsuit that doesn't show that their investigation was inadequate is not admissible basically for purposes of showing that this investigation was inadequate.

MS. KELLY: But it does show that they were on notice that their procedures may be inadequate. And we would submit that that would lead to the discovery of admissible evidence in this situation.

THE COURT: We are here to deal with what amounts to inadequacy and what doesn't amount to inadequacy. And the Court understands your position in regards to what they were on notice about.

MS. KELLY: We would submit that that would go to the willfulness.

THE COURT: The Court understands what it would go to.

MS. KELLY: Okay, Your Honor. Thank you.

MR. KOSTEL: May I be heard, Your Honor?

THE COURT: Mr. Kostel.

MR. KOSTEL: Yes, Your Honor. Just two very simple clarifications. For the lawsuits, can we have the agreement that we had last week, three years going back?

THE COURT: Well, if you have agreed to that, the Court doesn't want to get involved.

MR. KOSTEL: All right. Well, I believe that's what you ruled. But Mr. Erausquin and I agreed that three years was the appropriate window for the deposition inquiry. Can we have that carry over to the documents as well?

MS. KELLY: That is what we agreed to, yes.

MR. KOSTEL: All right, great. And, Your Honor, on the employee information, number 18 is a far different animal than what you just said about compensation. Request 18, produce all documents prepared by you or on your behalf used in connection with the training, instruction, supervision or evaluation of any of your employees or any third party paid by you identified in your responses to these interrogatories.

Can we just limit it to what you just said about compensation and evaluations and discipline?

THE COURT: I thought that's what I was just doing.

MR. KOSTEL: I was just making sure that we were addressing both of those requests, not just the one about compensation. Thank you, Your Honor.

Nothing further.

MS. KELLY: Your Honor, if I may be heard on that.

We would submit that training manuals or training instructions to these employees would be entirely relevant on how to conduct the disputes.

We don't have any of that information at this time. I don't know if there is information and he is just withholding those documents because of his objections, or if there are no training provided to the ACDV operators. And we think that would be entirely relevant to the reasonableness of the dispute and how the disputes are supposed to be, reinvestigations are supposed to be conducted.

And we would ask that that question not be limited--

THE COURT: Mr. Kostel, are there any training manuals?

MR. KOSTEL: I honestly don't know. I think I highlighted very clearly we weren't going to produce those. So, there was no question about whether I was objecting and producing or not because I said, I'm not producing that.

THE COURT: Why not?

MR. KOSTEL: Because we objected to the relevance of the training manuals because how far up the chain do we go with respect to how these employees are trained, and-- Number one. And number two--

THE COURT: What do you mean, how far up the chain?

MR. KOSTEL: Well, do you talk to their--

THE COURT: We're talking about the training of these particular employees. Are their training manuals that these particular employees are given concerning how they are supposed to conduct investigations?

MR. KOSTEL: That's a different question. And that would have been one I probably would have produced the training manuals for these operators.

That's not what I was asked. This is why I had to object. And again, we talked past each in the meet and confer. Training--

MS. KELLY: Your Honor--

MR. KOSTEL: Excuse me. Training, instruction, supervision or evaluation of any of your employees or any third party paid by you identified in your responses to these interrogatories. They could have said, the operators. They are going to go talk to the operators. They can ask them what the training was.

But I would be happy to provide the training manuals for those specific people. That's not what I was asked.

MS. KELLY: Your Honor, we did narrow it to those specific employees in our first meet and confer and in the proposed order I had sent Mr. Kostel, just for the record.

So, we are fine with that limitation.

THE COURT: What are we doing at the meet and confer? The parties seem to be on different pages in regards to what was even discussed at the meet and confer.

MS. KELLY: We have had two scheduled meet and confers and a lot of correspondence back and forth. I think we miscommunicated because I indicated-- Mr. Kostel would ask me, what more do you want? And I said, I want all the documents that are relevant to these requests. And I said, I don't know what you're withholding or not because you're saying you're giving me everything, but then you won't withdraw objections.

So, I don't know, for instance, if you have training manuals or not that you are withholding. I don't know if there is correspondence to Ms. Berrios that you're withholding or not because you continue to maintain your objections despite saying that you have produced everything.

And that's why a large focus of our motion was on all the general objections that were filed because it's very difficult for us to ascertain this.

On our second meet and confer when I tried to talk to Mr. Kostel after receiving the supplementation and reviewing it--

THE COURT: Well, let's make this easy for, let's make this easy for you. This Court disfavors general objections. All general objections are overruled.

MS. KELLY: I'm sorry, Your Honor, I misspoke. Mr. Kostel agreed to withdraw the general objections at our second meet and confer, but I misspoke, and I was referring to specific objections to each question.

And so, each-- Except for the first RFP, I believe every single interrogatory and every single request has specific objections to them.

And so, at our second meet and confer I said, it's difficult for me to figure out what you're withholding and what you're not, what you're responding to and what you're not because you have objections to every single one, yet you're representing to me that you've produced everything and you've fully answered everything. So, how am I to know?

And Mr. Kostel said, I'm representing to you, I've given you everything. But then now I'm hearing that we don't have-- There may be training manuals, he hasn't even asked about that.

And so, that's why we would submit that the Court should rule on the specific objections today because we're just going to be back here for the same purpose again.

THE COURT: Well, the reason he was objecting, essentially, it appears to this Court, that almost every single one of your requests he deemed overly broad.

MS. KELLY: And we--

THE COURT: When you start using the words "any and all," typically the Court would concur, those are overly broad.

MS. KELLY: And we did discuss narrowing the scope. So, I don't know why-- I had said, we'll stipulate to narrowing the scope to the past, I think to January 1, 2009, on a lot of them. And the Court ruled 2008 last week.

And so, I don't know why he would have to maintain an objection if we narrow the scope of that.

THE COURT: Well, narrowing of temporal scope --

MS. KELLY: Well, that's the basis--

THE COURT: -- doesn't narrow everything about the request.

MS. KELLY: Well, Mr. Kostel indicated to me that the basis for the overbroad objections was there was no time frame. And so, that's why I offered to narrow the scope at the meet and confer.

The second meet and confer ended abruptly because he was not willing to withdraw any specific objections. And I indicated, I can't figure out what you're not producing if you don't withdraw any of your objections when you're saying you're producing all the documents responsive--

THE COURT: But you can determine what you don't have, correct?

MS. KELLY: Right. And I tried to do that, but now I've looked at the FCRA manuals, I have looked at the training-- There is no training manuals, but he said he has produced all manuals. I looked at the manuals that he produced, and it's not very comprehensive regarding how to conduct an investigation. But he is saying that it's everything, so--

THE COURT: Well, he's going to produce any manuals that these particular operators use for training in determining how they investigate a complaint.

MS. KELLY: And I would submit that objections to that request should be withdrawn or stricken--

THE COURT: Ms. Kelly, get past the objections. Let's deal with what you have and what you need. The Court would strongly recommend and suggest that you focus your attention on the responses, not in regards to the technicalities of the objections.

If the Court believes that what you have is not what they have, that they have not produced what they are supposed to produce, the Court will deal with that issue.

MS. KELLY: Okay. Thank you, Your Honor.

MR. KOSTEL: Just 30 seconds to clear up one, I think, mistake.

I was very clear in our opposition what hadn't been produced. There was no mistake about training manuals. It is on page 2 of my opposition: Here are the disputes. I produced documents responsive to 25 of your 29 requests.

And I itemized the other four, Judge. I said: Prior litigation and settlements per our conversation last week, and per your order, employee personnel files, evaluations, and relating training materials. It is right there in number two.

If I could get a letter like that from them, I would understand what they wanted. I haven't gotten one yet.

Thank you.

THE COURT: Well, hopefully that letter will not be necessary because the parties can resolve the remaining disputes in their next meet and confer.

MR. KOSTEL: Excuse me, Your Honor, one other scheduling matter for next Friday if we do have to come back. I hope we don't. But we are going to be in front of Judge Trenga as well.

So, I just ask you to take that into consideration.

THE COURT: It wouldn't be the first time.

MR. KOSTEL: Thank you.

THE COURT: And the Court is going to require that a status report be filed with this Court no later than close of business next Wednesday, February 29, alerting this Court to what issues still remain outstanding.

MS. KELLY: And, Your Honor, do you want a brief on any interrogatory responses or anything that we can't agree to? Do you want briefing on that or--

THE COURT: Well, the Court can't tell you what you-- It's your motion.

MS. KELLY: Okay. Thank you, Your Honor.

THE COURT: Do whatever you believe is necessary to convince this Court that your position is correct.

Anything further?

MR. KOSTEL: No, Your Honor.

THE COURT: All right. There being nothing further, this Court stands adjourned.

NOTE: The hearing concluded at 10:39 a.m.

C E R T I F I C A T E of T R A N S C R I P T I O N

I hereby certify that the foregoing is a true and accurate transcript that was typed by me from the recording provided by the court. Any errors or omissions are due to the inability of the undersigned to hear or understand said recording.

Further, that I am neither counsel for, related to, nor employed by any of the parties to the above-styled action, and that I am not financially or otherwise interested in the outcome of the above-styled action.

/s/ Norman B. Linnell

Norman B. Linnell

Court Reporter - USDC/EDVA